MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 7296 OF 2006

UNION OF INDIA through General Manager, North Central Railway Allahabad & Anr. .. PETITIONERS

Vs.

ANITA PYARELAL WALMIKI D/o Late Shri Pyarelal, Ex-Safaiwala Northern Railway. .. RESPONDENT

Mr. T. J. Pandian for petitioners

Mr. J. N. Tanpure for respondent

CORAM: SMT. RANJANA DESAI & SMT. R. S. DALVI,JJ.

DATE: DECEMBER 10, 2007.

P.C.

. Union of India through General Manager, North Central Railway Allahabad and another have filed this writ petition challenging the judgment and order of the Central Administrative Tribunal ("the Tribunal" for short) dated 14/6/06.

2. The respondent claims to be the only daughter and legal heir of late Shri Pyarelal Walmiki, who was working as Safaiwala with the North Central

Railway. He died while in service on 25/8/92. From the original application, it appears to be the case of the respondent that at the time of the death of her father she was a minor and in the custody of her uncle. Her mother predeceased her father when she was one year old. The respondent's uncle then entered into correspondence with the petitioners requesting them to give her pension and other terminal dues which she would be entitled to as the only heir of her father. She sent a legal notice dated 17/9/87. But the respondents refused to pay her the dues.

3. Therefore, claiming to be his only legal heir, the respondent filed Original Application No. 672 of 2003 in the Tribunal, inter alia for a declaration that she is entitled for settlement of dues such as Provident Fund, Gratuity, Leave Salary, C.G.E.I.S. amount etc. The said application was allowed by the impugned order in which the Tribunal passed appropriate direction. Relevant portion of the Tribunal's order may be quoted:

> "In case the applicant had started getting the family pension soon after the

death of her father, she could have probably got better education and her life would have been more organized. It would be appropriate, therefore, for the respondents to get the pension papers completed by calling the applicant on a fixed date and giving her another chance, if she is not able to turn up on the first date given. I tend to agree with the counsel for the applicant that there is no question of any succession certificate as there is no other claimant for the family pension and other terminal dues of the deceased employee apart from the applicant. In any case, based on the available records the respondents can always ascertain the veracity of the statement made by the applicant regarding her being the sole legal heir of the deceased employee. The entire dues along with 18% interest be given to the applicant within four months of the date of receipt of this order.

. O.A. is allowed as above. No costs."

4. This order is challenged by the petitioners

in this petition. The contention of the petitioners inter alia is that in the absence of succession certificate, the Tribunal could not have passed such an order.

5. Admittedly from the date the respondent's father died i.e. from 28/8/92 till 2003 when the application was filed by her no one staked any claim to the respondent's father's pension and other dues contending that he/she was his heir. When we made this query, learned counsel for the petitioners could not make a statement that any such claim was made by anybody. Learned counsel for the respondent submitted that in the circumstances of the case, the respondent may be paid the dues on her executing a proper indemnity bond.

6. Learned counsel for the petitioners on instructions from Mr. K. P. Khaddar, DPO/Law Allahabad who is present in the court states that the petitioners would pay the principal amount, if a proper indemnity bond is executed by the respondent.

7. Respondent Anita Pyarelal Walmiki is present

in the court. Indemnity Bond is tendered in the court by learned counsel for the respondent duly signed by the respondent. The respondent confirms that she has signed the said bond. Learned counsel for the petitioners on instructions from Mr. Khaddar, states that it is in the required and proper format. A copy of the said Indemnity Bond is taken on record and marked "X". Learned counsel for the respondent states that the said Indemnity Bond will be filed in the petitioners' office.

8. By order dated 5/6/07 this court had directed the petitioners to deposit the dues payable to the heirs of the deceased in this court. We are informed that accordingly an amount of Rs.3,30,081/- has been deposited by the petitioners in this court. Indemnity Bond covers Rs.83,864/-. This represents the principal amount payable to the respondent. In the abovementioned circumstances, after the dues of the respondents are paid to her the balance amount will have to be handed over to the petitioners.

9. Learned counsel for the respondent on

instructions from the respondent, who is present in the court, states that she will accept this amount as full and final settlement of the principal amount. This statement is accepted.

10. At this stage, learned counsel for the respondent submits that the respondent is also entitled to interest on Rs.83,864/-. Learned counsel for the petitioners on instructions from Mr. K. P. Khaddar, D P O / Law, Allahabad, who is present in the court says that the respondent is not entitled to interest. Once the respondent is held entitled to the family pension and other terminal dues of her father, the petitioners will have to pay interest. The Tribunal has granted interest at the rate of 18%. In our opinion, in the circumstances of the case the petitioners should pay the respondent interest @ 6% per annum from 1/10/03 till payment on the principal amount on the condition that she executes an Indemnity Bond representating the interest amount payable to her to the satisfaction of the petitioners.

11. Learned counsel for the respondent on instructions from the respondent says that the

respondent shall execute a similar Indemnity Bond. He states on instructions from her that the interest calculated at 6% per annum will be accepted by her as full and final settlement towards the interest amount. This statement is accepted.

12. On the proof of Indemnity Bonds having been filed with the petitioners, the registry shall pay the amount of Rs.83,864/- as also interest amount calculated as aforesaid to the respondent. The registry shall then handover the remaining amount to the petitioners by cheque.

13. Petition is disposed of in the aforestated terms.

JUDGE

JUDGE